



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TRG

Docket No: 1573-00

10 October 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) Woods v. Secretary of Defense, 496F.Supp 192
(D.D.C., 1980)

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting a better characterization of service than the general discharge issued on 12 July 1971.

2. The Board, consisting of Mr. Pfeiffer, Ms. Madison and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 26 September 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy for four years on 15 July 1965 at age 18. At that time he had completed 12 years of education and attained a GCT score of 52 which placed him in Mental Group III.

d. During his active service, Petitioner served in an excellent manner and only received one nonjudicial punishment for an unauthorized absence of about one day. He was released from active duty and transferred to the Naval Reserve on 25 June 1969

with his service characterized as honorable. His six year military obligation did not end until 14 July 1971. While in the Naval Reserve completing his military obligation he did not affiliate with a reserve unit and performed no duties.

e. On 3 August 1970 Petitioner was convicted by civil authorities of second degree robbery. The court sentenced him to serve six months in the county jail with the remainder of the sentence suspended for a probationary period.

f. Based on his conviction by civil authorities, Petitioner was processed for an administrative discharge. An administrative discharge board met on 22 June 1971 and recommended that he be retained in the Naval Reserve to complete his military obligation on 15 July 1971. Subsequently, the discharge authority approved the commanding officer's recommendation for a general discharge. The general discharge was issued on 12 July 1971.

g. In 1980, the United States District Court for the District of Columbia decided the case set forth at reference (b). In that case, the Court ruled that the armed services could discharge a reservist who was serving in a totally inactive status if the individual was convicted by a civilian court. However, the court also ruled that the member could not receive a discharge under other than honorable conditions. In reaching the latter conclusion, the court cited the tenuous bonds between such servicemembers and the armed services, and noted that convictions of these members have little impact on the services. The court concluded that a discharge under other than honorable conditions can only be based on conduct directly affecting the performance of military duties.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that the ADB recommended retention and that Petitioner was only three days from completing his military obligation when he was issued the general discharge. If he had completed his military obligation an honorable discharge was required. Given the courts findings set forth in reference (b), the Board concludes that no useful purpose is now served by the general discharge and it should be recharacterized to honorable.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 12 July 1971 he was issued an honorable discharge vice the general discharge now of record.

b. That this Report of Proceedings be filed in Petitioner's naval record.

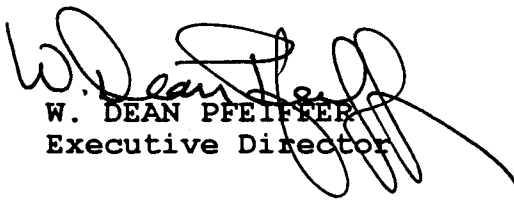
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director